

No. 9(1)81-6 Lab/14329.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947, (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s. Hallex Engineering Industrial Plot No. 76, Sector 6, Faridabad :—

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT,
HARYANA, FARIDABAD

Reference No. 486 of 1980

between

SHRI NIRANJAN LAL, WORKMAN AND THE MANAGEMENT OF M/S. HALLEX
ENGINEERING INDUSTRIES, PLOT NO. 76, SECTOR 6, FARIDABAD

Present :—

Shri H. R. Dua for the workman.

Shri R. C. Sharma for the respondent management.

AWARD

This reference No. 486 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana,—*vide* his order No. ID/FD/96-80/35153, dated 14th October, 1980, under section 10(i) (c) of the Industrial Disputes Act, 1947 for adjudication of the dispute existing between Shri Niranjana Lal, workman and the management of M/s. Hallex Engineering Industries, Plot No. 73, Sector, 6, Faridabad. The term of the reference was

Whether the termination of service of Shri Niranjana Lal was justified: and in order? If not, to what relief is he entitled?

On receiving this reference, notices were issued to the parties. The parties appeared in the court and filed their pleadings. On the pleadings of the parties, the case of the workman according to the demand notice and claim statement is that the workman joined the services on 21st November, 1978 as Turner at Rs. 360 per month. The respondent management illegally terminated the services of the workman on 23rd May, 1980 for which the workman made a complaint to the Labour Inspector on 26th May, 1980 and on the intervention of the Labour Inspector the workman was taken on duty but the management issued chargesheet-cum-suspension letter to the workman after taking the workman on duty. The workman replied the same but the respondent constituted domestic enquiry against the workman and Shri Satish Ahuja was appointed as enquiry officer. The workman appeared before the enquiry officer on 14th June, 1980 and offered an objection letter. The enquiry officer turned out the workman in the enquiry proceedings on the first day of proceedings of the enquiry. The workman wrote a letter dated 30th June, 1980 through registered A.D. but received no reply for the same. Again the workman wrote a letter dated 1st July, 1980 through registered A.D. and received no reply. Thereafter the workman submitted the demand notice to the factory and to the Conciliation Officer. He further stated that there was no enquiry held against him and the termination of service of the workman was illegal, unjustified and improper in the eye of law. So he prayed for his reinstatement with full back wages and continuity of service.

The case of the respondent according to their written statement is that the workman on 19th May, 1980 committed serious act of misconduct, misbehaved, abused and threatened the partner of the factory while he was found sleeping in the lawn of the factory at night on duty. The respondent handed over another chargesheet dated 29th May, 1980 for refusing the letter of chargesheet dated 21st May, 1980. The workman replied the same and after consideration of the application the management issued a letter of enquiry dated 4th June, 1980 which was sent by registered post as the workman was not attending the factory. The workman was aware of enquiry proceedings but he refused to participate in the enquiry proceedings which was recorded by the enquiry officer in the enquiry proceedings and the enquiry proceedings were closed *ex parte* and the enquiry officer submitted his findings on 20th June, 1980. Thereafter the management issued the second show cause-notice dated 26th June, 1980 which was replied by the workman on 1st July, 1980. After considering the reply of the workman and the findings of the enquiry officer the management issued a discharge letter dated 17th July, 1980. The action of the management is quite justified, legal and proper of discharging the workman after a regular domestic enquiry. On the pleadings of the parties, the following issues were framed :—

1. Whether the domestic enquiry held by the management is proper, fair and in order? If so, to what effect (O.P.M.)
2. Whether the termination of service of the workman is proper, justified and in order? If not, to what relief is he entitled?
3. Relief?

My issue-wise findings is as under :—

Issue No. 1 :

Issue No. 1 is whether the domestic enquiry held by the management is proper, fair and in order? The representative of the respondent argued on this issue that the workman was found sleeping by the partner of the factory on 19th May, 1980, at 12.00 a.m. in the lawn of the factory and he misbehaved and assaulted him and tried to snatch away the stay-stick which he was carrying. The partner was also pushed and pulled by the workman. So on this mis-conduct and mis-behaviour the workman was chargesheeted,—*vide* letter dated 20th May, 1980 which is Ex. M-3 and M-2. The workman replied the same,—*vide* Ex. M-11 dated 20th May, 1980 which was found unsatisfactory and Shri Ahuja, was appointed as enquiry officer, *vide* letter Ex. M-1. The workman sent a letter to the partner Ex. M 6 for objecting the appointment of the enquiry officer and for the place of enquiry. The workman also sent a letter to the partner *vide* Ex. W 3 for the same objections stating therein that the place should not be out-side of the premises of the factory. for the enquiry proceedings which are to be taken place on 14th June, 1980 at 10.00 a.m. The workman joined the enquiry proceedings on 14th June, 1980

before the enquiry officer and demanded some workman from outside to help in the enquiry which the enquiry officer refused to accept and after that the workman left the enquiry office and went away in these circumstances. The enquiry officer has no choice except to proceed with the enquiry *ex parte*. So the enquiry officer recorded the statement of Shri Om Parkash, partner of the factory as MW-1 and Shri Rohtash Singh, Chowkidar of the factory as MW-2 and closed the enquiry as the representative of the management did not want to adduce any evidence for the enquiry. On the proceedings of the enquiry the enquiry officer gave his findings, as Ex. M-5 and declared the workman guilty of sleeping on duty, misbehaved and misconduct pulling and pushing and assaulting the partner of the factory and also refusal to receive the charge-sheets.

After considering the findings of the enquiry officer and explanation of the workman the management issued a letter Ex. M-13 for the termination of the workman which is justified and according to the findings of the enquiry officer, the enquiry was fair and according to the rules of natural justice.

The representative of the workman argued on this issue that the workman was stopped at the gate on 23rd May, 1980 without any reason and the workman made a complaint to the Labour Inspector,—*vide* Ex. W-1 and the inspector called the respondent-management on this complaint and they agreed to take the workman on duty and when the workman went to the factory the management handed over the charge-sheet which the workman replied,—*vide* Ex. W-2. After this reply the respondent called the workman for enquiry and the workman received a notice for enquiry,—*vide* Ex. M-1 and joined the enquiry before the enquiry officer and raised some objections according to Ex. W-3. On the objections of the workman the enquiry officer asked the workman to go outside and they will conduct the enquiry themselves. The workman came out according to the orders of the enquiry officer and received no information of enquiry proceedings and received no information for next date of enquiry proceedings from the enquiry officer. The workman sent a registered A.D. letter on 20th June, 1980 Ex. W-1. When the workman did not receive the reply of this letter then again sent a letter on 1st July, 1980 which is Ex. W-4 through register A.D. The postal receipt of which is Ex. W-4/1 for knowing the next date of enquiry proceedings, but received no reply. The workman attended the factory gate daily up to 17th June, 1980 when he received the termination order from the respondent. The representative of the workman argued that how this enquiry can be called fair and proper. When the Enquiry Officer recorded the findings of the management evidence without giving opportunity to the workman for his cross-examination. The enquiry held by the respondent management is not all fair and proper and the workman was not given any facilities demanded and objected by the workman. The workman was not given the list of witnesses of the management, the copy of certified standing orders and the documents relied upon. The workman was not allowed to bring his representative to participate in the enquiry proceedings. The enquiry officer started the enquiry on 17th June, 1980 and finished the same on the same day without participation of the workman. The enquiry was held outside the premises of the factory which was objected by the workman before the starting of enquiry proceedings. The workman's representative argued that the enquiry proceedings was just to complete the formalities of the enquiry and it was a DARAMA to terminate the service of the workman.

After hearing the arguments of both the parties and carefully going through the file, I am of the view that no fair and proper enquiry was held by the respondent-management. The respondent-management has failed to prove this issue. The enquiry officer started the enquiry on 17th June, 1980 and finished the same on the same day shows the intention of the respondent. If the workman had walked out as alleged by the respondent they should have sent a letter to the workman in this respect and should have given further opportunity for the participation in the enquiry which was not done by the respondent management. The workman was not given any facilities in the enquiry proceedings as demanded by him through his letters and before the enquiry officer which was very essential according to law. The workman was not supplied any document or list of witnesses before the start of enquiry which is quite illegal in the eye of law. The arguments put forward by the workman's representative has some force to be believed so in these circumstances, I hold that the enquiry was not fair and proper so this issue is decided against the respondent and in favour of the workman.

Issue No. 2 :

Issue No. 2 is as per reference. After deciding the issue No. 1 of domestic enquiry there is no need of discussing at length this issue because when the domestic enquiry was not fair and proper then the order of termination was also not justified and proper for terminating the service of the workman. So the order of termination is not justified and proper in the eye of law and the workman is entitled for his reinstatement with full backwages and continuity of service. No orders as to costs.

This be read an answer to this reference.

Dated the 17th November, 1981.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

Endorsement No. 3303, dated 27th November, 1981

Forwarded (four copies), to the Commissioner and Secretary to Govt., Haryana, Labour & Employment Deptt., Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK
Presiding Officer,
Labour Court, Haryana, Faridabad.